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In re Application of
Dreher
Application No. 10/772,411
Filed: February 6, 2004
Attorney Docket No. EMI-0056-1
For: A LASER-MARKING ADDITIVE

OFFICE OF PETITIONS

: DECISION GRANTING
: PETITION
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This is a decision on the petition under 37 CFR 1.53(e), filed May 21, 2004, requesting in effect, withdrawal of the Notice of Incomplete Nonprovisional Application, mailed May 6, 2004 and accordation of a February 6, 2004 filing date to the above-identified application.

The application was deposited on February 6, 2004. On May 6, 2004, the Office of Initial Patent Examination mailed a Notice informing petitioner, *inter alia*, that no filing date had been accorded to the application papers deposited on February 6, 2004 because no drawing was present, as is required by 35 USC 113. It is noted that the specification filed on February 6, 2004 referenced drawing figures. In response to the Notice, petitioner timely filed the present petition.

It is noted that the above-identified application contains method claim. As stated in MPEP 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence.)

MPEP 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figures in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures

referred to in the specification as discussed in MPEP 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims. Therefore, the above-identified application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g).

MPEP 601.01(g) states that if an application is filed without all of the drawing figures referred to in the specification, a "Notice of Omitted Items" is mailed indicating that the application has been accorded a filing date.

In view of the above, the "Notice" mailed May 6, 2004 was mailed in error and is hereby withdrawn. The petition is **granted**. No petition fee has been charged in connection with this matter.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of **February 6, 2004**.

It is noted that the entire contents of the prior application no. 60/445,231 was incorporated by reference in the instant application upon initial filing. Therefore, petitioner may wish to submit a preliminary amendment and the figures from the provisional application in this application.¹ The examiner of record will consider any preliminary amendment and drawings for new matter.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6712.



E. Shirene Willis
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¹ The drawings referenced in the petition are not present in the application file.